

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 406 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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R.S. GUPTA

Versus

GENERAL MANAGER

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Appearance:

MR PB MAJMUDAR for Petitioner

MR RP BHATT for Respondent No. 1, 2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/02/96

ORAL JUDGEMENT

Late Shri R.S.Gupta filed this petition in this court challenging therein the order at Annexure.E dated 30.6.82 passed by the Deputy General Manager, Gujarat Refinery, Baroda under which he was ordered to be dismissed from service after holding departmental inquiry on the charges of theft and dishonesty in connection with the company's property. Shri Gupta was holding the post of Plant Operator Gr.I. During the pendency of this petition Shri Gupta has expired on 10.9.85. His legal

heir the widow moved Civil Application No. 224/86 for bringing heirs on record. This Civil Application was allowed by this court on 7.2.86 but the correction has not been carried out by the learned counsel in the record of the writ petition. The petitioner late Shri R.S.Gupta was served with the charge-sheet vide memo dated 2.7.81. The delinquent was charged with the misconduct that on 26.6.81 at about 2.25 hours while on duty he was caught by C.I.S.F. guard while pouring company's petrol in his scooter No. GAF 1151. This misconduct amounts to theft of the company's property. It is a serious misconduct as provided under the Standing Orders of the Company. The petitioner was directed to furnish his explanation. He furnished his explanation on 6.7.81 but that was not found satisfactory by the respondent and the respondent has taken a decision to hold an inquiry on the misconduct alleged against the petitioner. The inquiry officer after conducting the inquiry submitted the inquiry report in which the petitioner was found guilty of the alleged misconduct of theft of office property. The Disciplinary Authority after considering the inquiry report and the record of the inquiry passed an order of dismissal of the petitioner from service. Taking into consideration the fact that theft of petrol from the plant is a very serious misconduct and there is no mitigating circumstances also to view it leniently the punishment of dismissal was considered justified. The petitioner approached this Court against the aforesaid order by filing SCA No. 2837/82. Said SCA was dismissed by this Court as not pressed on the ground that the petitioner has an alternative remedy of appeal against the order of dismissal. The appeal of the petitioner has been dismissed by the Appellate Authority vide order dated 27.8.82. The Appellate Authority has also considered the question whether penalty imposed is in accordance with law. But taking into consideration of all these facts and circumstances of the case as well as the fact of theft and that the company is engaged in refining of crude oil - a wellknown petroleum product, the penalty of dismissal has been held to be justified. Hence this petition by the petitioner. The theft of petroleum product of the company made by the petitioner has been reported to the police. The police has registered a case and after investigation, charge sheet has been filed in the criminal court. The competent Criminal Court vide its judgment dated 18.1.83 has acquitted the petitioner of the charge of theft by giving benefit of doubt. The petitioner has produced copy of the judgment of the criminal court along with the application for amendment. The learned counsel for the respondent has not disputed

the fact that the petitioner has been acquitted in the criminal case by the criminal court. The learned counsel for the petitioner while challenging the orders of dismissal and the order of the Appellate Authority, Firstly he contended that the inquiry has been conducted in violation of the principles of natural justice. It has next been contended that as the petitioner has been acquitted in the criminal case, which was based on the same charge of theft of the petrol of the company, he cannot be punished again for the same offence in the departmental proceedings on the same charges. Lastly it has been contended that the petitioner has been acquitted in the criminal case which is a mitigating circumstance and the penalty of dismissal should be substituted by some lesser penalty. The penalty of dismissal is too harsh and excessive in a case where on the same charges the criminal court has acquitted the petitioner.

2. On the other hand the learned counsel for the respondent contended that the inquiry has been conducted after following the principles of natural justice. The acquittal of the petitioner in the criminal case has no relevance whatsoever because there is no bar on the same charges an employee cannot be proceeded in a criminal case as well as departmentally. The standard of proof in these two proceedings is different. In criminal case the charges are to be proved beyond reasonable doubt; whereas in the departmental inquiry the standard of proof is of preponderance of probability. It has next been contended that this court will not sit above the finding of the Inquiry Authority, as the Appellate Authority. In support of his contention, the learned counsel for the respondent placed reliance on the decision of the Supreme Court in the case of Kusheshwar Dubey vs. Bharat Co and anor. reported in 1988(4)SCC 319, Government of Tamil Nadu vs. A.Rajapandian AIR 1955(SC) 561 and Union of India vs. Sardar Bahadur reported in 1972(2) SCR 218. It has next been contended that this court has no power of judicial review in the matter of punishment to be awarded to the delinquent on misconduct by the Discipline and Appeal Authority. What punishment has to be awarded to the delinquent is exclusively in the discretion of the discipline and appellate authority. This court sitting under article 226 of the Constitution cannot substitute its own discretion in such matters. In support of this contention the learned counsel for the petitioner has placed reliance upon the decision of the Supreme Court in the case of State Bank of India vs. Samarendra Kishore Endow & anor. reported in JT 1994(1) SC) 217. As a rejoinder to the submission learned counsel for the

petitioner argued that this court has jurisdiction to interfere in the matter of penalty imposed upon the delinquent by the disciplinary authority. In support of this contention the learned counsel for the petitioner has relied upon the decision of the Supreme Court in the case of B.C. Chandulal vs. Union of India & ors. reported in JT 1995(8) (SC) 65. I have considered the contentions which have been made by the learned counsel for the parties. The contention of the learned counsel for the petitioner that the petitioner was not served with the charge sheet cannot be accepted. The Annexure.A is a document which titles as charge sheet but the learned counsel for the petitioner made a grievance that it was only a letter calling for explanation of the petitioner on the misconduct and not a charge sheet. The document Annexure.A contains a charge which has been alleged against the petitioner. In this document it has been mentioned that the petitioner's act referred therein amounts to theft and dishonesty in connection with company's property which is a serious misconduct within the meaning of clause 22(iv) of the Company's Standing Orders. The petitioner was called upon to explain why disciplinary action should not be taken against him for this serious act of misconduct. Further recital in the aforesaid documents is very material. The petitioner was directed to send his explanation within 3 days from the date of receipt of chargesheet failing it shall be presumed that the petitioner has nothing to explain and further action will be taken as per the Standing Orders. A reading, as a whole, of this document I am satisfied that it is a full fledged charge sheet and not a letter of calling of explanation as tried to be argued by the learned counsel for the petitioner. The purpose and object of the charge sheet is to make known to the petitioner the charges which have been levelled against him and he has to explain the same. The first part of this document Annexure.A is a charge which has been framed against the petitioner. The petitioner has to be given opportunity to explain about the charge. This opportunity is furnished to the petitioner and every delinquent should be afforded an opportunity to explain that charge framed against him is not sustainable. The next stage comes where the disciplinary authority will consider the reply to the charge submitted by the delinquent and then to form an opinion whether it is a matter in which a departmental inquiry should be conducted or charges should be dropped. The procedure that should be followed in the present case is that after the receipt of the reply to Annexure.A, the Disciplinary Authority has to hold inquiry against the petitioner. Yet there are two other reasons on the basis of which

this contention of the learned counsel for the petitioner is not acceptable. The petitioner has not made any grievance that Annexure. A is not a charge sheet. Not only this the petitioner has participated in the inquiry and he has produced all his defence in support of the charge framed against him. The petitioner was fully aware of and made known of the charges on which the inquiry will be held and he has to defend.

3. The learned counsel for the petitioner has failed to show how any prejudice has been caused to him in the matter on the ground as alleged and contended during the course of the arguments. Any illegality in the procedure of the inquiry does not vitiate the inquiry unless the petitioner is made out a case that it has resulted in the serious prejudice to his defence or any other legal right which the petitioner has failed to make out in the present case. The next contention of the learned counsel for the petitioner that he has been given very short time for filing reply to the charge sheet. It is suffice to say that this contention of the petitioner is also devoid of any substance. Whether time was sufficient or not is a matter for the petitioner to decide and admittedly when the petitioner has not made any grievance in this respect, it is too late for him to make such a grievance at this stage when dismissal order has been passed and Appellate Authority has also confirmed the said order. In case the petitioner considered that 3 days was insufficient to file reply, then he should have made grievance in respect thereof at that time. Apart from this the fact, that petitioner has not prayed for more time to file reply to the charge sheet suggests that his grievance which has been made now in the writ petition is nothing but only an after thought and got up for the sake of argument. Apart from this, the learned counsel for the petitioner has not raised these grievances before the Appellate Authority. In fact this would have been real grievance then the same would have been raised before the Appellate Authority and non raising of the same by the petitioner before the said authority establishes that he has no grievance whatsoever on this count. In view of this, the first contention of the learned counsel for the petitioner is rejected. In the case of *Kusheshwar Dubey vs. M/s Bharat Cooking Coal Ltd & Ors.* reported in 1988(4)SCC 319 the apex Court held that the disciplinary proceedings as well as the criminal case can be initiated simultaneously on the same charges against the delinquent. It has been further held by the Supreme Court in the aforesaid case that in appropriate cases where the delinquent in such case prays for stay of the departmental proceedings on the ground of pendency of the

criminal case on the same charges it can be granted. Acquittal of the petitioner in criminal case admittedly came after the order of dismissal was passed. . Thus acquittal in criminal case which has been made by giving benefit of doubt will have no effect on the legality, propriety and correctness on the order of dismissal made after holding the departmental inquiry. The learned counsel for the petitioner has failed to point out any provision from the relevant Standing Order or from any other Act or the Rules that on the acquittal of the delinquent in the criminal case on the same charges, the departmental inquiry automatically comes to an end. The matter would have been different where the dismissal would have been only on the ground of conviction in the criminal case which is not the case here. The disciplinary proceedings is not a criminal trial. In the criminal trial the standard of proof is the standard of proving the guilt of the accused beyond reasonable doubt. On the other hand in the disciplinary proceedings the standard of proof is that of preponderance of probability. The acquittal of the petitioner in the criminal case is based on by giving him the benefit of doubt and as such it is not correct to contend by the learned counsel for the petitioner that the petitioner could not have been punished in the departmental inquiry after his acquittal by the criminal court. These are two separate and distinct proceedings. It is not a case of double penalty on the same charges as argued by the learned counsel for the petitioner. Criminal liability of the petitioner for the offence committed, is a matter to be taken and decided by the criminal court has relevance. But the conduct may laid to serious misconduct and which may render himself unfit for the job. Whether the petitioner should be continued in service when he has committed such a serious misconduct of theft of the property of the company is a matter to be gone into departmentally and where charges are proved penalty has to be given. There are serious charges of theft of property of the company, and certainly it is a case of serious misconduct. This court sitting under Article 226 of the Constitution has no jurisdiction to sit as an appellate authority on the report of the inquiry officer and decisions of the Disciplinary and appellate authority. As stated earlier, I do not find any illegality or infirmity in the inquiry and so far as the merit of the case is concerned this court will not go on the question of sufficiency of evidence to prove the charge against the petitioner. The second contention of the learned advocate for the petitioner deserves no acceptance. Lastly the learned counsel for the petitioner submitted that the penalty of dismissal is

excessive or harsh is also devoid of any merit. In the case of B.C.Chaturvedi vs. Union of India & ors.(supra) Supreme Court has considered the matter regarding power of review of the court in the matter of penalty imposed on the proved misconduct and held,

"The next question is whether the Tribunal was justified in interfering with the punishment imposed by the disciplinary authority. A Constitution Bench of this Court in State of Orissa & ors. vs. Bidyabhushan Mohapatra (AIR 1963 SC 779) held that having regard to the gravity of the established misconduct, the punishing authority had the power and jurisdiction to impose punishment. The penalty was not open to review by the High Court under Article 226. If the High Court reached a finding that there was some evidence to reach the conclusion, it became unassessable. The order of the Governor who had jurisdiction and unrestricted power to determine the appropriate punishment was final. The High Court had no jurisdiction to direct the Governor to review the penalty. It was further held that if the order was supported on any finding as to substantial misconduct for which punishment "can lawfully imposed", it was not for the court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The court had no jurisdiction, if the finding prima-facie made out a case of misconduct, to direct the Governor to reconsider the order of penalty. Thus view was reiterated in Union of India vs. Sardar Bahadur (1972)2 SCR 218. It is true that in Bhagat Ram v. State of Himachal Pradesh & ors. (AIR 1983 SC 454) a Bench of two judges of this Court, while holding that the High Court did not function as a court of appeal, concluded that when the finding was utterly perverse, the High Court could always interfere with the same. In that case, the finding was that the appellant was to supervise felling of trees which were not hammer marked. The Government had recovered from the contractor the loss caused to it by illicit felling of trees. Under those circumstances, this court held that the finding of guilt was perverse and unsupported by evidence. The ratio, therefore, is not an authority to conclude that in every case the Court/Tribunal is empowered to interfere with the punishment imposed by the disciplinary authority.

In Rangaswami vs.State of Tamil Nadu (AIR 1989 sc 1137) a Bench of three Judges of this Court while considering the power to interfere with the order of punishment, held that this Court while exercising jurisdiction under Article 136 of the Constitution, is empowered to alter or interfere with the penalty; and the Tribunal had no power to substitute its own discretion for that of the authority. It would be seen that this Court did not appear to have intended to lay down that in no case, the High Court/Tribunal has the power to alter the penalty imposed by the disciplinary or the appellate authority. The controversy was again canvassed in State Bank of India's case(supra) where the court elaborately reviewed the case law on the scope of judicial review and powers of the Tribunal in disciplinary matters and nature of punishment. On the facts in that case, since the appellate authority had not adverted to the relevant facts, it was remitted to the appellate authority to impose appropriate punishment.

18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of misconduct. The High Court/Tribunal while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

19. The Tribunal in this case held that the appellant had put in 30 years of service. He had brilliant academic record. He was successful in the competitive examination and was selected as a Class I Officer. He earned promotion after the disciplinary proceeding was initiated. It would

be difficult to get a new job or to take a new profession after 50 years and he is 'no longer fit to continue in government service" Accordingly, it substituted the punishment of dismissal from service to one of compulsory retirement imposed by the disciplinary authority. We find that the reasoning is wholly unsupportable. The reasons are not relevant nor germane to modify the punishment. In view of the gravity of the misconduct, namely, the appellant having been found to be in possession of assets disproportionate to the known source of his income, the interference with the imposition of punishment was wholly unwarranted. We find no merit in the main appeal which is accordingly dismissed with no order as to costs."

From the judgment of the Supreme Court it comes out that the High Court of the Tribunal while exercising powers of judicial review cannot normally substitute its own conclusion on the penalty and impose some other penalty. The Supreme Court has held that if the punishment imposed by the disciplinary or appellate authority shocks the conscience of the High Court or Tribunal, it would properly mould the relief either directing the disciplinary authority/appellate authority to reconsider the penalty imposed or to shorten the litigation, it may itself in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof. In the present case both the disciplinary authority and appellate authority have considered the question of punishment which should be imposed on the proved misconduct. Looking to the fact that it is a case of theft of petrol product which the company produces by refining crude oil, it was considered to be a serious misconduct and the penalty of dismissal has been given. The Appellate Authority has considered the matter of punishment and it has given good and cogent reasons not to interfere with the penalty of dismissal. The appellate authority has confirmed the penalty of dismissal by giving reasons that in the past offence of theft of petrol have been viewed seriously and penalties of dismissal have been imposed upon the concerned employees. The Indian Oil Corporation is a Government of India Undertaking and is mainly engaged in the manufacturing of crude oil and petrol. Theft of petrol by the employee from the refinery is a serious and grave misconduct. If the employees who are engaged in connection with refining of crude oil and start making theft of petroleum products, it will be a serious thing

and dismissal of punishment of proved misconduct in such case is not shocking the conscience of the court. The petitioner-Mr. Gupta was having hardly five years service on the day he committed the theft. If such an employee is engaged in the activity of theft of petrol like the present one, it will certainly cause serious loss to the company and any lenient view is taken will create a bad precedent. In the case of D.C.Chaturvedi (Supra) the Tribunal has interfered in the matter of punishment but the Supreme Court has reversed the finding and the punishment of dismissal in the case was held to be justified. The learned counsel for the petitioner failed to make out any case of exceptional and rare nature which warrants interference of the court in the matter of penalty imposed by the disciplinary authority and confirmed by the Appellate Authority.

In the result, the petition fails and the same is dismissed. Rule discharged. Interim relief granted earlier stands vacated.

No order as to costs.

cgg

for correction pl. see original.